

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter Of)	
)	
AT&T Petition to Launch a Proceeding)	
Concerning the TDM-to-IP Transition;)	GN Docket No. 12-353
)	
Petition of the National)	
Telecommunications Cooperative)	
Association for a Rulemaking to)	
Promote and Sustain the Ongoing)	
TDM-to-IP Evolution)	

REPLY COMMENTS OF THE GREENLINING INSTITUTE

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The Greenlining Institute (“Greenlining”) hereby files these Reply Comments in the above-captioned matter.

I. INTRODUCTION

AT&T’s vision of an all-IP network would seriously harm low-income communities and communities of color. AT&T’s petition, if granted, would eliminate the rights of consumers and states to shape the TDM-to-IP transition. Assuming, for the sake of argument, that the Commission has the authority to exclude consumers and states from influencing the TDM-to-IP transition, doing so would be bad public policy and against the public interest. Accordingly, Greenlining respectfully requests that the Commission deny AT&T’s petition.

II. ARGUMENT

A. AT&T’s Vision of an all-IP Network Would Seriously Harm Low-Income Communities and Communities of Color.

Low income communities and communities of color are more likely to keep traditional basic local voice service.¹ It appears that these communities keep traditional basic telephone service because that basic service is more reliable, affordable, and offers better service quality.² AT&T’s proposed transition to an all-IP network would eliminate those communities’ ability to keep TDM service. If the Commission accepts AT&T’s proposal, large providers like AT&T and Verizon will most likely retire TDM service or forcibly migrate consumers from TDM service to IP-enabled services. Additionally, if the Commission exempts all-IP networks from

¹ Free Press, The Center for Media Justice, and National Hispanic Media Coalition, Trip Wires: How AT&T’s Proposal to Dismantle Telecommunications Networks Harms Underserved Communities (Feb. 2013), available at http://www.savetheinternet.com/sites/default/files/resources/AT%26T_all-IP_fact_sheet.pdf. AARP notes that senior are also more likely to keep traditional basic local voice service; *see* Comments of AARP (hereafter, AARP Comments) at 1-2.

² AARP Comments at 2.

universal service obligations,³ all-IP network operators could refuse service to low-income communities and communities of color. If the TDM network is retired and no longer available to these customers, they might not be able to obtain any service whatsoever. This would be a significant policy devolution, taking the state of American communications back several decades, and should not be undertaken under any circumstances.

AT&T responds to this concern with unsupported assertions that the communications market is competitive, and that if an all-IP network operator refused service to a consumer, that consumer could simply purchase service from another provider.⁴ However, AT&T has also asked the Commission to relieve carriers operating test centers from any interconnection obligations.⁵ As many commenters have noted, smaller carriers are dependent on incumbents like AT&T, who provide the network backbone.⁶ Accordingly, competitive carriers who offered TDM service would not be able to interconnect with the rest of the telephone network.⁷ Additionally, in the absence of any interconnection requirements, AT&T and Verizon could refuse to interconnect with those competitive carriers who do offer IP service.⁸ Without the ability to offer nationwide calling, it is likely that those carriers will either go out of business or, as has historically occurred, be purchased by an incumbent like AT&T or Verizon. Accordingly, there is a substantial risk that low-income communities and communities of color will be forced to choose between phone service at monopoly prices and no phone service whatsoever.

The harms caused by an ILEC's monopoly power would be significantly magnified by the fact that, under AT&T's proposal, states would be preempted from maintaining any oversight

³ Comments of AT&T at 8 (hereafter, AT&T Comments).

⁴ AT&T Petition at 16-17

⁵ AT&T Comments at 11.

⁶ See Comments of XO Communications, LLC at p. 32.

⁷ *Id.*

⁸ *Id.*

over those test centers.⁹ States therefore could not impose any consumer protection, universal service, or public safety obligations on that ILEC. The lack of meaningful choice of telephone services, combined with the complete lack of state oversight of all-IP telephony providers, would seriously harm low-income communities and communities of color.

B. AT&T's Petition Would Eliminate the Rights of Consumers and States to Shape the TDM-to-IP Transition, and Must Therefore Be Denied.

1. Consumers Have the Right to Shape the TDM-to-IP Transition.

Consumers are currently shaping the TDM-to-IP transition. As AT&T notes, many consumers have made the switch from TDM to IP-enabled services.¹⁰ However, AT&T and Verizon note that many consumers choose *not* to make this switch.¹¹

There are a number of reasons that consumers choose not to switch, such as price, quality of service, and unfamiliarity with technology.¹² AT&T could no doubt convince these consumers to switch to IP-enabled services by lowering prices, increasing the quality of service, and educating consumers about the benefits of those services.

If the market is as competitive and the benefits of IP-enabled services are as great as AT&T claims, AT&T should have no difficulty convincing consumers to switch. AT&T does not apparently wish to use this tactic. Instead, AT&T seeks to circumvent the competitive market and consumer choice by asking the Commission to allow forced migration of consumers from TDM to IP-enabled services.¹³

⁹ See AT&T Comments at 8.

¹⁰ AT&T Comments at 9.

¹¹ See *id.* at 22; Verizon Comments at 7.

¹² See AARP Comments at 2.

¹³ AT&T Petition at 22.

AT&T's proposal ignores the fact that the Commission lacks the authority to direct citizens to purchase particular products.¹⁴ However, assuming for the sake of argument that the Commission *could* allow forced migration of customers, the Commission *should not* do so. As the citizens who use and pay for the telecommunications network, consumers have the right to shape the transition of that network. Accordingly, the Commission should deny any request by AT&T that would infringe upon that right.

2. States have the Right to Shape the TDM-to-IP Transition.

States have historically helped shape the nation's telecommunications network. "[S]tate and local regulators have played a fundamental role in the proper functioning of our national communications infrastructure."¹⁵ As NASUCA notes, "State Commissions...are familiar with local geography and the relevant players in the local wire centers. They are close to the scene and to many or most of the relevant sources of information. They have a focused interest in seeing that the transition proceeds with a minimum of adverse impact to the local population. They have a focused ability to commit resources to investigating potential sources of difficulty and potential threats to the affected populations."¹⁶

Congress and the courts have both acknowledged that states play an important role in shaping the country's telecommunications network.¹⁷ For example, states enable "isolated or otherwise unprofitable communities and customers" to obtain telephone service through

¹⁴ National Federation of Independent Business et. Al. v. Sebelius, 567 U.S. ____ (2012), holding that Congress cannot rely on its commerce power to "compel individuals not engaged in commerce to purchase an unwanted product."

¹⁵ Comments of Public Knowledge at 10; *see also*, NTCA Petition at 7.

¹⁶ Initial Comments of The National Association of State Utility Consumer Advocates at 18; *see also*, Comments of Sprint Nextel Corporation at 7 (hereafter, Sprint Comments).

¹⁷ *See* Comments of The National Association of Regulatory Utility Commissioners at 8-9.

Universal Service Programs.¹⁸ States also protect the public safety, by administering 9-1-1 programs and ensuring that safety and reliability of the network.¹⁹ States also protect consumers, by enacting consumer protection measures and resolving consumer complaints.²⁰ However, despite the states' history of shaping the nation's telephone network, AT&T argues that the Commission should preempt any state oversight of the implementation of TDM to IP test sites²¹ and, presumably, from the TDM to IP transition as a whole.

Greenlining agrees with arguments that the Commission lacks the authority to preempt states from regulating intrastate telecommunications services. "[I]t is largely the purview of State, rather than federal, regulators to determine the timing of the retirement of TDM networks."²² As NARUC points out, Congress has explicitly preserved states' ability to regulate intrastate service.²³ Commission preemption of state regulation of intrastate service is not only prohibited by statute, but also by the Constitution. The Constitution does not give the federal government the ability to require the States to govern according to the federal government's instructions.²⁴

AT&T's proposal ignores the fact that the Commission lacks the authority to preempt states' authority over intrastate telecommunications services.²⁵ However, assuming for the sake of argument that the Commission could preempt state regulation, it should refrain from doing so. States have the right to shape the transition to an all-IP network in order to promote goals of

¹⁸ Comments of the Western Telecommunications Alliance at 19.

¹⁹ Comments of Public Knowledge at 30.

²⁰ *Id.*

²¹ AT&T Comments at 8.

²² Sprint Comments at 9.

²³ NARUC comments at 8.

²⁴ *National Federation of Independent Business et. Al. v. Sebelius*, 567 U.S. ____ (2012), holding that Congress cannot rely on its commerce power to "compel individuals not engaged in commerce to purchase an unwanted product."

²⁵ *Id.*

universal service, consumer protection, and public safety. Accordingly, the Commission should deny any request by AT&T that would infringe upon that right.

III. CONCLUSION

AT&T's Petition improperly seeks to circumvent consumers' market choices, and therefore preclude consumers—the very people who use, pay for, and depend upon the telephone network—from shaping the transition to an all-IP network. Similarly, by asking the Commission to preempt states from their authority to enforce consumer protections, promote universal service, and protect public safety, AT&T's Petition improperly seeks to prevent states from shaping the transition to an all-IP network. Assuming, for the sake of argument, that the Commission has the authority to exclude consumers and states from influencing the TDM-to-IP transition, doing so would be bad public policy and against the public interest.

Granting AT&T's petition would be the first step towards a telecommunications network with low service quality and supracompetitive prices for those customers that incumbents like AT&T and Verizon deigned to offer service. Many other customers, a large number of whom would likely be from low-income communities and communities of color, could be unable to obtain any service whatsoever. Accordingly, the Commission should deny AT&T's Petition.

Respectfully submitted,

Dated: February 25, 2013

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